

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>95-10133</u>
JOHN DAVID NORRIS)	
SABINE CHRISTINE NORRIS)	FILED
)	at 3 O'clock & 02 min. P.M.
Debtors)	Date: 2-8-96
)	
)	
JOHN DAVID NORRIS)	
SABINE CHRISTINE NORRIS)	
)	
Plaintiffs)	Adversary Proceeding
)	Number <u>95-01052A</u>
vs.)	
)	
ARRINGTON'S INC. d/b/a)	
ARRINGTON AUTO SALES)	
)	
Defendant)	

ORDER

John and Sabine Norris ("Norrises") filed this three count adversary proceeding against Arrington's Inc. d/b/a Arrington Auto Sales ("Arrington") for alleged violations of the Georgia Motor Vehicle Sales Finance Act and the Truth in Lending Act ("TILA").¹ The Norrises have voluntarily dismissed Count I under the Georgia Motor Vehicle Sales Act and Count II under TILA. Because the parties both rely upon the loan documents and have stipulated that

¹15 U.S.C. §1601 et seq.

there remain no issues of material fact, they have submitted the remaining count under TILA for summary adjudication based upon the documents and the briefs of the parties. For the reasons that follow, Arrington did not violate the TILA.

On September 15, 1994, the Norrises purchased a vehicle from Arrington and executed a Motor Vehicle Installment Sales Contract ("Contract"). The Schedule of Payments included in the Contract disclosed that the Norrises would pay \$100.00 as a down payment on the date of the sale, with a "pick-up payment" applied to the down payment of \$272.00 to be paid the following week². Additionally, the Schedule of Payments specified that the dates and amounts of the remaining payments on the vehicle.

The Norrises filed their Chapter 13 petition on January 27, 1995, listing Arrington as a creditor. On June 7, 1995, the Norrises instituted the present action.

I. Arrington Adequately Disclosed the Down Payment Arrangement Under TILA

The Norrises allege that Arrington's treatment of the down payment and "pick-up payment" amount violated the disclosure requirements of TILA and the implementing Federal Reserve Board Regulation Z³. Regulation Z defines a down payment as:

[A]n amount, including the value of any

²Arrington did not charge interest on the pick-up payment.

³12 C.F.R. §226 et seq.

property used as a trade-in, paid to the seller to reduce the cash price of goods or services purchased in a credit sale transaction.

A deferred portion of the downpayment **may** be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge (emphasis added).

12 C.F.R. §226.2(a)(18).

This Regulation gives the creditor the option to treat the pick-up payments either as part of the down payment or as part of the amount financed. The Official Staff Commentary provides that:

2. Pick-up payments. Creditors may treat the deferred portion of the downpayment, often referred to as "pick-up payments," in a number of ways. If the pick-up payment is treated as part of the downpayment:

- It is subtracted in arriving at the amount financed under §226.18(b).
- It may, but need not, be reflected in the payment schedule under §226.18(g).

If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) **or if the creditor chooses not to treat it as part of the downpayment:**

- It must be included in the amount financed.
- It must be shown in the payment schedule.

Whichever way the pick-up payment is treated, the total of payments under §226.18(h) must equal the sum of the payments disclosed under §226.18(g).

12 C.F.R. Pt. 226, Supp. I Para. 2(a)(18) (emphasis added). Courts should give great deference to the Staff Commentary when

interpreting TILA, and should follow these opinions unless the Commentary is irrational. Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 564-568, 100 S.Ct. 790, 796-798, 63 L.Ed.2d 22 (1980).

Applying the above-cited Commentary, Arrington correctly applied and disclosed the pick-up payment. The Contract indicates that Arrington treated the pick-up payment exclusive of the down payment, as allowed by the second option. Arrington properly included it in the amount financed and listed it in the payment schedule. Also, the total of payments equals the sum of payments disclosed. These actions are consistent with the requirements of TILA.

The Norrises allege that Arrington's disclosure is inadequate under TILA, citing Glover v. Doe Valley Development Corp., 408 F. Supp. 699 (W.D. Ky. 1975). In Glover, the court held that the manner in which a creditor disclosed the amount of the down payment amount violated TILA and Regulation Z. The creditor had listed the downpayment as follows:

7. FEDERAL TRUTH IN LENDING DISCLOSURES	
(an integral part of this Agreement)	
... (b) Cash Down Payments Received	
<u>\$600.00</u>	
<u>\$200.00</u>	Due <u>Today</u>
<u>\$400.00</u>	Due <u>7/25/74</u>

Id. at 704. The actual amount of the total down payment was \$600.00. However, this disclosure violated the down payment itemization requirement of 12 C.F.R. §§226.6(c)(2) & 226.8(c)(2) for two reasons. First, the creditor failed to specifically designate the "Total Down Payment" as required by TILA. Id. Second, the down

payment disclosure was unduly vague because it was unclear whether the total down payment equaled \$600.00 or \$1200.00. Id.

Glover is not persuasive in this case for two reasons. First, significant portions of TILA and all of Regulation Z were repealed and re-enacted effective October 1, 1982. The revised Regulation Z contains no sections comparable to former §§226.6(c)(2) & 226.8(c)(2), on which the Glover court relied. Furthermore, even under the Glover analysis, the manner in which the down payment is disclosed by Arrington is straightforward and does not cause any confusion. The Contract accurately and completely disclosed the amount of the down payment, and the amount and timing of the remaining pick-up payments and principal and interest payments.

It is therefore ORDERED that judgment in this adversary be entered in favor of the defendant.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 8th day of February, 1996.